

**UNITED STATES DEPARTMENT OF COMMERCE****Pat nt and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/353,592	07/15/99	RIVERA	A 101054

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IM71/0119

EXAMINER

HON, S

ART UNIT

PAPER NUMBER

1772

DATE MAILED:

01/19/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

**Office Action Summary**

Application No.

09/353,592

Applicant(s)

RIVERA ET AL.

Examiner

Sow-Fun Hon

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

**Attachment(s)**

- 15) ☒ Notice of References Cited (PTO-892)                      18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 16) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2,3,4,5                      20) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

2. Claims 1-14, 16-23 are rejected under 35 U.S.C. 102(e) as being anticipated by Leung (US Patent 5,928,611).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Leung teaches an applicator for dispensing an polymerizable and/cross-linkable material which is porous, absorbent or adsorbent and includes a polymerization or crosslinking initiator (abstract). Leung teaches that suitable materials can be 1,1-disubstituted ethylene monomers such as alpha-cyanoacrylates (column 4, lines 34-68). A list of thermoplastics and thermoplastic elastomers include the ones claimed by Applicant (column 4, lines 11-18).

Leung teaches that the applicator container may be a syringe, a tube, a vial, a bulb or a pipette (column 8, lines 20-31) or an eyedropper (column 12, lines 60-62). The container holding

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the polymerizable and/or crosslinkable material may comprise the initiator wherein the material is stored separately within the applicator container so as not to contact the initiator within the container. The container may be lined or coated with the initiator (column 10, lines 43-53). The initiator can be detergent, nonionic surfactants such as polysorbate, cationic ones such as tetrabutylammonium bromide, and a whole list of Applicant's claimed initiators (column 9, lines 42-68). Leung teaches that the material may be useful as tissue adhesives and other biomedical applications (column 11, lines 20-28).

Leung teaches a process of making the applicator wherein the applicator tubes are squeezed to shatter the glass ampoules (frangible vials) thereby releasing monomer material. The applicator is then inverted and the material is forced out the tip by squeezing the applicator tube (column 12, lines 16-25).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-14, 16-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leung. Leung has been discussed above.

Leung teaches a process of making the applicator wherein the applicator tubes are squeezed to shatter the glass ampoules (frangible vials) thereby releasing monomer material. The applicator is then inverted and the material is forced out the tip by squeezing the applicator

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tube (column 12, lines 16-25). One of ordinary skill in the art would have known that the inner glass ampoule would have to be sealed after the addition of the polymerizable and/or crosslinkable material.

Therefore it would have been obvious to one of ordinary skill in the art to have worked out the claimed steps of the process from the invention of Leung.

5. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Leung. Leung has been discussed above.

Leung teaches that the material may be useful for biomedical applications such as providing structural implants (column 11, lines 20-28). In the list of thermoplastics and thermoplastic elastomers given by Leung are fluorocarbon resins and polyurethanes (column 4, lines 11-18). One of ordinary skill in the art would have known that some very well known biomedical crosslinkable elastomers are polysiloxanes and silicone rubbers.

Therefore one of ordinary skill in the art would have known to dispense the well known siloxanes and silicones from the applicator container taught by Leung.


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Any inquiry concerning this communication should be directed to Sow-Fun Hon whose telephone number is (703)308-3265. The examiner can normally be reached Monday to Friday from 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's primary examiner, Rena Dye, can be reached on (703)308-4331. The fax phone number for the organization where this application or proceeding is assigned is (703)305-3599.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0661.

87A  
01/11/01

  
RENA L. DYE  
PRIMARY EXAMINER  
*Tech Center 1700*